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MIGUEL & BENJAMIN ORTEGA

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

MIGUEL ORTEGA, BENJAMIN  
ORTEGA, A Minor, By And Through His  
Guardian Ad Litem, ANA ROSA  
ORTEGA,

Plaintiffs,

vs.

CITY OF OAKLAND, OAKLAND POLICE  
DEPARTMENT, CHIEF WAYNE  
TUCKER, In His Capacity As The Police

Case No.:C-07-02659 JCS

**UPDATED JOINT CASE  
MANAGEMENT CONFERENCE  
STATEMENT**

DATE: April 4, 2008  
TIME: 10:30 a.m.  
COURTROOM: A, 15<sup>th</sup> Floor

Chief Of The City Of Oakland, RAMON J. ALCANTAR, Individually And In His Capacity As A Police Officer For The City Of Oakland, BERNARD ORTIZ, Individually And In His Capacity As A Police Officer For The City Of Oakland, and Does 1 through 200,

) The Honorable Magistrate Judge  
) JOSEPH C. SPERO  
)  
)

Defendants.

The parties to the above-entitled action jointly submit this Updated Joint Case Management Statement and Proposed Order and request the Court adopt it as its Case Management Order in this case.

**F. The parties which have not been served and the reason:**

All parties have been served with the summons and complaint. Plaintiffs filed a Second Amended Complaint which added a new cause of action in violation of FRCP section 15(a) as leave of the court had not been given, there was no stipulation by the parties to add a new cause of action, and the answers to the First Amended Complaint had already been filed. Plaintiffs' counsel agreed to file a third amended complaint to correct the problem and agreed that the parties would not have to answer the Second Amended Complaint. However the Third Amended Complaint has yet to be filed. Plaintiffs have served the amended complaint and will file the amended complaint with the court's permission on April 7, 2008.

**III. DISCOVERY**

**Plaintiffs:** The defendants have named a number of police officers as witnesses in this matter. Defendants provided a CD Rom with the interviews of those officers as well as the Internal Affairs Investigation file, which contained a number of interviews with the officers, named in the defendants' initial FRCP Rule 26 Disclosure. Plaintiff intends to depose several of the officers who had knowledge of the facts in this case and their observations concerning the allegations of plaintiffs' false arrest and personal injuries. Plaintiffs intend to notice the depositions of these officers within the next thirty days.

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1 Plaintiffs' counsel has provided narratives of the proposed testimony of all  
2 witnesses disclosed in the plaintiffs' supplemental FRCP Rule 26 Disclosure. For those  
3 witnesses that the plaintiffs have identified but have been unable to interview, the  
4 plaintiffs have provided telephone numbers to allow the defendants' counsel to contact  
5 the witnesses directly.

6 Plaintiff Benjamin Ortega treated at Kaiser Hospital Oakland concerning  
7 physiological injuries. Master Ortega does not recall the name of the counselor with  
8 whom he treated. Plaintiffs have provided the defendants' counsel with authorizations  
9 for the release of medical records, including treatment by psychologists.

10 Plaintiffs' counsel was contacted on April 1, 2008, by defendants' counsel with  
11 the request that plaintiffs produce Genesis Preciado and Eduardo Ortega for deposition  
12 pursuant to a notice of deposition in lieu of serving these witnesses with subpoenas.  
13 Defendants' counsel required an answer by April 2, 2008. Plaintiffs' counsel has only  
14 been able to contact Genesis Preciado, in this short period of time. Mr. Preciado is a  
15 part-time student and holds a job on a part-time basis. Mr. Preciado has agreed to be  
16 deposed so long as the deposition is set for 5:00 p.m. or later so that he not miss school  
17 or work. Plaintiffs' counsel will continue to attempt to contact Eduardo Ortega.

18 **Defendants:** Plaintiffs have provided a Supplemental Rule 26 Disclosure listing  
19 nine additional witnesses, including addresses for five of the nine additional witnesses.  
20 Plaintiffs have provided telephone numbers for the remaining four witnesses. The  
21 narratives (as to the witness' proposed testimony) lack detail for six of the nine  
22 additional witnesses so it is difficult to determine what those six witnesses will testify to.  
23 Therefore, at this time, it is difficult to determine whether we will require the depositions  
24 of any or all of those six additional witnesses. However, we anticipate receiving  
25 supplemental information from Plaintiffs' counsel as it becomes available to them to  
26 assist in our evaluation. However, Plaintiffs have produced the signed declarations of  
27 Eduardo Ortega and Genesis Preciado (two of the nine additional witnesses).  
28 Defendants intend to notice the depositions of these two witnesses for April 21, 2008.

1 Plaintiffs also produced some medical records for Benjamin Ortega and also  
2 produced a signed release from Benjamin Ortega for his Kaiser medical records.  
3 Defendants will therefore subpoena plaintiff Benjamin Ortega's medical records.  
4 Plaintiffs' counsel has failed to provide the name(s) of any psychiatric treatment  
5 providers.

6 **V. DISPOSITIVE MOTIONS**

7 Defendants may file a motion for summary judgment for qualified immunity for  
8 Defendant police officers and a motion for summary judgment for Defendants City of  
9 Oakland and Chief Wayne Tucker. There are no motions currently pending.

10  
11 DATED: APRIL 2, 2008

12 JOHN A. RUSSO, City Attorney  
13 RANDOLPH W. HALL, Assistant City Attorney  
14 JAMES F. HODGKINS, Supervising Trial Attorney  
CHARLES E. VOSE, Senior Deputy City Attorney

15 By: /s/  
16 Attorneys for Defendants  
CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT,  
CHIEF WAYNE TUCKER, SGT. BERNARD ORTIZ

17 DATED: APRIL 2, 2008

18 JOHN VERBER, ESQ.  
19 JAMES Y. HIGA, ESQ.  
20 BURNHAM BROWN

21 By: /s/  
22 Attorneys for Defendant  
OFFICER RAMON ALCANTAR

23 DATED: APRIL 2, 2008

24 LAW OFFICES OF STEVEN R. JACOBSEN

25 By: /s/  
26 CATHERINE R. DOUAT  
Attorney for Plaintiffs  
BENJAMIN ORTEGA AND MIGUEL ORTEGA